IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5093 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

NARENDRASINH GHELUBHA CHUDASAMA

Appearance:

1. Special Civil Application No. 5093 of 2002

MR HARESH J TRIVEDI for Petitioner No. 1

MR GK RATHOD for Respondent No. 1

MR VIRENDRA BAHETI for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 07/08/2003

ORAL JUDGEMENT

#. By filing this petition, the petitioner Corporation

has challenged the order passed by the Labour Court, Ahmedabad dated 16.2.2001 in Reference (LCA) No.1211 of 1995. By the impugned award, the Labour Court has passed the order of reinstatement in favour of the respondent workman as well as awarded lump-sum amount of Rs.50,000/- towards back wages in favour of the respondent.

#. The respondent workman was serving as Driver in the petitioner Corporation. At the relevant time, the respondent was serving at Upleta Depot of Junagadh Division. The respondent was subjected to the departmental inquiry on the ground that, he permitted two passengers to sit in the Driver's cabin without charging any fare. The incident in question took place on 17.9.1990. On the aforesaid date, the respondent was driving a bus, which was on Anand - Junagadh route. The said bus was checked by the Checking Squad of the Corporation at Nadiad Depot. At that time, it was found that two passengers, who were travelling in the bus and were going from Anand to Junagadh, were permitted to get down from the Driver's cabin at Nadiad Depot. The Checking Inspector, thereafter, inquired from the said passengers, and, at that time, the respondent workman interrupted the Checking Squad and informed the Checking Inspector that the said passengers are with him. The respondent workman also told the Checking Squad that the said two passengers will not pay any amount towards the fare and penalty. In view of the aforesaid conduct, the respondent was chargesheeted and, ultimately, he was dismissed from service by order dated 21.3.1992. The respondent, thereafter, raised the industrial dispute, which was referred to the Labour Court, Ahmedabad for adjudication.

#. The Labour Court, after considering the evidence on record, came to the conclusion that allegations made against the workman regarding misbehaviour with the Officer are not proved and that the Depot Controller was not examined in the inquiry proceedings. The Labour Court found that, even the statement of the Conductor was not taken about the misbehaviour of the respondent. Considering the aforesaid aspect of the matter, the Labour Court came to the conclusion that the order of dismissal is on higher side, as, this is not a case in which such extreme punishment is required to be inflicted on the ground that the respondent driver allowed two passengers unauthorisedly to sit in his cabin. The Labour Court also found that the Conductor of the bus has paid the amount of fare and penalty.

#. Considering the aforesaid aspect of the matter, the

Labour Court interfered with the order of removal by resorting to the provisions of Section 11-A of the Industrial Disputes Act ("the Act" for short) and passed the order of withholding of two increments without future effect. It is not in dispute that the respondent workman is, subsequently, reinstated in service in view of the order of reinstatement of the Labour Court.

#. Mr.Trivedi, who is appearing for the petitioner Corporation, submitted that since the respondent is found to have committed misconduct by allowing two passengers to sit in his cabin unauthorisedly, the Labour Court should not have awarded the lump-sum amount of Rs.50,000/- towards the back wages in favour of the respondent. He also submitted that, even the reinstatement should not have been granted by the Labour Court.

#. Mr.Baheti, however, submitted that the respondent has not committed any serious misconduct. He submitted that, even otherwise, no legal evidence is available on record by which misconduct of the respondent workman can be said to have been proved. He submitted that, even the Labour Court has also found at one place that the respondent has not committed any misconduct. He submitted that the Labour Court, in para 6, has observed that the Conductor of the bus as well as the Depot Controller are not examined to prove that the respondent workman has misbehaved, in any manner. He also submitted that the past record of the respondent workman is also unblamish.

#. I have heard the learned advocates for both the sides. In my view, so far as the order of reinstatement is concerned, the same is not required to be interfered with by this Court since the petitioner Corporation has already reinstated the respondent workman in service. It is required to be noted that, this is not a case in which any financial irregularity is attributed to the respondent workman, in any manner. Unfortunately, the Labour Court has not given clear finding as to whether the charge against the respondent workman is proved or not by stating anything positively in this behalf. Ultimately, it is the duty of the Conductor to issue the tickets to the passengers and it is not the duty of the Driver. However, in my view, at least, the charge against the respondent is proved to the effect that he allowed two passengers to sit in his cabin unauthorisedly. However, the Labour Court has interfered with the impugned order by exercising the powers under Section 11-A of the Act since it is not proved that the respondent has committed any serious misconduct or any

financial irregularity.

#. So far as the order regarding payment of Rs.50,000/- towards the back wages is concerned, in my view, there is some substance in the argument of Mr.Trivedi to the effect that when the misconduct is proved against the respondent, the Labour Court should not have awarded such amount towards the back wages with 18% interest.

#. It is submitted by the learned advocate for the respondent that, unfortunately, the respondent remained unemployed for such a long time and was required to incur some debts. He, therefore, submitted that, the amount awarded towards the back wages by the Labour Court may not be interfered with. However, considering the fact that, service record of the respondent is found to be unblamish and this being the only solitary incident by which the respondent has allowed two passengers to sit in his cabin and the fact that it is not even alleged that the respondent has charged any amount from them, I modify the order regarding payment of Rs.50,000/- towards the back wages with 18% interest. However, in my view, when some misconduct, as stated above, is proved against the respondent workman, he should not be allowed to go scot free. Therefore, while confirming the order of punishment, i.e. withholding of two increments without future effect, the respondent shall be entitled to Rs.10,000/- instead of Rs.50,000/- towards back wages for the intervening period without any interest. The petitioner Corporation is directed to pay Rs.10,000/- instead of Rs.50,000/- towards back wages within a period of two months from today. So far as the order of reinstatement with penalty of two increments without future effect is concerned, the same is confirmed.

##. This petition is accordingly partly allowed. Rule is made absolute with no order as to costs.

(P.B.Majmudar,J)
(pathan)